

Letter of Findings: 04-20120587P
Sales Tax
For Tax Years 2009, 2010, and 2011

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ISSUE

I. Tax Administration–Negligence Penalties.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalties.

STATEMENT OF FACTS

Taxpayer manufactures fiberglass and aluminum truck caps, tonneau covers, and retractable covers for various truck accessory companies. The Indiana Department of Revenue (Department) conducted a sales and use tax audit for the 2009, 2010, and 2011 tax years (Tax Years). While the audit determined that Taxpayer complied with sales tax reporting and remitting requirements, the same audit found that Taxpayer had failed to remit use tax corresponding to a number of purchases of tangible personal property used in conjunction with Taxpayer's business. The Department issued proposed assessments for use tax, interest, and penalties. Taxpayer filed a timely protest, seeking abatement of the penalty amounts. An administrative hearing was held to address the protest of the penalties for the Tax Years. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalties.

DISCUSSION

In Taxpayer's protest letter, Taxpayer asserted that it paid the use tax and interest amounts shown on the proposed assessments. However, Taxpayer protested the imposition of the ten-percent negligence penalties for the Tax Years pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

During the hearing, Taxpayer provided further explanation regarding its failure to self-assess and pay use tax on its purchases of certain items of tangible personal property. Taxpayer has provided sufficient information to establish that its failure to pay the deficiency in this instance was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2\(c\)](#). While the Department concludes that Taxpayer's circumstances during the Tax Years showed that Taxpayer acted with reasonable cause, the Department notifies Taxpayer that should these circumstances arise again, the Department may not find the same penalty waiver warranted.

FINDING

Taxpayer's protest of the imposition of the penalties for the 2009, 2010, and 2011 tax years is sustained.

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